

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INTER-COUNTY RURAL ELECTRIC)	
COOPERATIVE CORPORATION)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 94-326
)	
KENTUCKY UTILITIES COMPANY)	
)	
DEFENDANT)	

O R D E R

On April 2, 1996, Inter-County Rural Electric Cooperative Corporation ("Inter-County") filed a motion requesting a rehearing or amendment of the Commission's March 14, 1996 Order authorizing Kentucky Utilities Company ("KU") to provide electric service to Kentucky Wire and Cable Company ("Kentucky Wire"). Inter-County alleges that the Commission erred in deciding this territorial boundary dispute by considering the difference in electric rates to be charged by the two adjacent electric suppliers.

Inter-County acknowledges that when a new electric consuming facility locates in two adjacent service territories, the Commission must determine which utility shall be the supplier based on the four criteria set forth in KRS 278.017(3). However, Inter-County maintains that the reference to "reasonable costs" in criteria (3)(c) encompasses only the cost to connect service and excludes any consideration of the recurring rates for electric service. Since its rates were previously approved by the Commission as being fair, just, and reasonable, Inter-County argues

that the intent of KRS 278.017 is to preclude any comparison of rates of the adjacent electric suppliers.

In addition, Inter-County claims that the Commission has impermissibly mixed the issue of rates with service in violation of the decision in South Central Bell v. Utility Regulatory Commission, Ky., 637 S.W.2d 649 (1982) and has failed to follow prior decisions in boundary dispute cases. Had the Commission ignored the disparity of rates, Inter-County opines that it would have prevailed under the statutory criteria in KRS 278.183.

KU filed a response in opposition to rehearing, stressing that the Commission properly interpreted the term "reasonable cost" in KRS 278.017(3)(c) to mean the utility's total cost of service to the customer. Further, KU notes that since this was not a rate case, the South Central Bell decision is inapplicable.

Based on the petition, the response and being otherwise sufficiently advised, the Commission finds that rehearing should be denied. In determining which retail electric supplier should serve an electric consuming facility located in two adjacent service territories, one of the criteria is:

The adequacy and dependability of existing distribution lines to provide dependable, high quality retail electric service at reasonable costs.

KRS 278.017(3)(c). This criteria makes no distinction between the costs to connect service and the costs for the electric service, i.e. the rates. All of these costs are within the statutory ambit of "retail electric service at reasonable costs."

The interpretation urged by Inter-County would effectively rewrite the criteria to read, ". . . at reasonable costs to connect service." Such restrictive language was not included by the General Assembly, and the Commission finds no basis to interpret such a restriction into the statute. The "reasonable costs for retail electric service" encompass both the cost to connect service and the recurring charges for such service.

The Commission's interpretation of "reasonable cost" is consistent with that of Inter-County's prior to the March 14, 1996 Order. The General Manager of Inter-County addressed the "reasonable cost" provision in KRS 278.017(3)(c) by stating that it had been providing service to Kentucky Wire at "rates which were adjudged to be fair, just and reasonable."¹ In its opening statement at the hearing, Inter-County's counsel stated that, "The testimony will show that the rates which Inter-County will use are rates approved and found to be fair, just, and reasonable by this Commission."²

The rate issue was again addressed by Inter-County in its brief when, discussing KRS 278.017(3)(c), it stated that:

ICRECC [Inter-County] has facilities in place to provide dependable, high quality retail electric service to the manufacturing facility at a reasonable cost. [citation omitted] ICRECC rates for electric service are approved by the Commission as fair, just, and reasonable; and this testimony was unchallenged except to note that Commissioner

¹ Prepared Direct Testimony of Leo Hill, pp. 8-9.

² Transcript of Evidence, October 5, 1995, p. 12.

Breathitt clarified that the rate differential amounted to about \$5,000 per year. [citation omitted]³

Having maintained throughout this case that it could provide the requisite level of service at "reasonable cost" because its rates had been adjudged "fair, just, and reasonable," Inter-County's newly found argument that its rates cannot be considered in determining "reasonable cost" rings hallow indeed.

Inter-County's reliance on South Central Bell v. Energy Regulatory Commission is misplaced. There the Court held that the Commission was without authority in a rate case to penalize a utility for inadequate service because KRS Chapter 278 established separate and distinct procedures for setting rates and investigating service issues. Here, the Commission has not attempted to set any rates and none of the statutory provisions cited in that case are applicable to the resolution of an electric territorial boundary dispute under KRS 278.016 to 278.018. Rather, the statutory procedure under KRS 278.017(3)(c) mandates consideration of a retail electric supplier's ability to provide "dependable, high quality retail electric service at reasonable costs." (emphasis added)

Furthermore, the March 14, 1996 Order does not depart from prior Commission precedent. Inter-County cites no case in which the Commission previously interpreted KRS 278.017(3)(c) to exclude consideration of the rates of the adjacent retail electric


³ Inter-County Post Hearing Brief, p. 13.

suppliers, nor any case where the Commission found neither supplier to have a distinct advantage without considering rates.

IT IS THEREFORE ORDERED that Inter-County's petition for rehearing or amendment is denied.

Done at Frankfort, Kentucky, this 17th day of April, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director